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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	No. CR-08-00901 SBA
)	
Plaintiff,)	APPLICATION, DECLARATION AND
)	[PROPOSED] ORDER FOR LEAVE TO FILE
v.)	RESPONSE TO GOVERNMENT'S JUNE 23
)	REQUEST TO ADMIT EVIDENCE OF
FERNANDO GONZALEZ-VERGARA,)	DEFENDANT'S PRIOR CRIMINAL
)	RECORD
Defendant.)	
)	
)	Pretrial Conference: July 6, 2009

Fernando Gonzalez-Vergara, by and through his counsel, Assistant Federal Public Defender Angela M. Hansen, respectfully requests that the Court grant him leave to file the attached response to an issue that was raised by the government just six days ago. On June 23, 2009, in a response brief to an unrelated defense motion *in limine*, the government for the first time has stated that it seeks to admit at trial evidence that Mr. Gonzalez had "repeated contact" with law enforcement authorities. In other words, it seeks to introduce evidence of Mr. Gonzalez's prior arrest and conviction record.

In support of this application, I, Angela M. Hansen, hereby declare:

1. I am an Assistant Federal Public Defender for the Northern District of California,

1 Oakland Division. My office has been appointed to represent Mr. Gonzalez in this case.

2 2. On March 17, 2009, the parties set this case for trial, at which time the Court ordered
3 pre-trial motions due on June 9, 2009, and responses due a week later, on June 16, 2009. On June
4 17, 2009, the Court continued the trial date by one week, but the briefing schedule on motions
5 remained unchanged.

6 3. Prior to filing pre-trial motions, I participated in a “meet and confer” conference with
7 government counsel to address the potential issues that might arise at trial. The government did not
8 provide notice of its intent to introduce Mr. Gonzalez’s prior record at that conference; instead, the
9 government affirmatively stated that it would not seek to introduce evidence that Mr. Gonzalez had
10 sustained prior convictions.

11 4. On June 9, 2009, I filed two motions *in limine* on behalf of Mr. Gonzalez. In reliance
12 upon the government’s representations at our “meet and confer” conference, I did not file an *in*
13 *limine* motion to exclude Mr. Gonzalez’s prior conviction records. I did not receive any response
14 brief from the government on the date the government’s responses were due – June 16, 2009.

15 5. On June 23, 2009, I received two responsive briefs from the government. In the
16 government’s response addressing our argument that Mr. Gonzalez’s custodial status when he was
17 “found in” the United States should be excluded at trial, the government for the first time stated that
18 it intended to introduce evidence of Mr. Gonzalez’s prior arrest and conviction record to prove that
19 he knowingly and voluntarily remained in the United States. This issue is separate and apart from
20 the argument raised in our opening motion.

21 6. Because this “notice” was first provided in a responsive brief to an unrelated defense
22 motion, I had no opportunity to respond within the time permitted by the Court’s briefing schedule.

23 7. For these reasons, I respectfully request the Court’s permission for leave to file the
24 attached response brief opposing the government’s June 23, 2009 request to have Mr. Gonzalez’s
25 prior conviction records introduced as evidence at trial.

1 I declare under penalty of perjury that the foregoing is true and correct, except for those
2 matters stated on information and belief, and as to those matters, I am informed and believe them to
3 be true.

4 Executed this 29th day of June, 2009, in the Northern District of California.

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6 _____/S/_____
7 ANGELA M. HANSEN
8 Assistant Federal Public Defender
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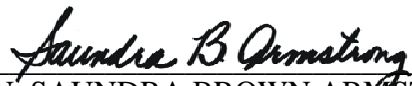
ORDER

Based on the declaration of counsel in the application above, the Court hereby FINDS:

1. Given that Mr. Gonzalez received notice on June 23, 2009 that the government intended to introduce Mr. Gonzalez's prior conviction records at trial;
2. Given that the briefing schedule on motions *in limine* had lapsed by the time that defense counsel first received notice of the government's intention;
3. Given that the government's notice was provided in a responsive brief to an unrelated defense motion, precluding the defendant an opportunity to respond;

For good cause, IT IS HEREBY ORDERED that Mr. Gonzalez is permitted to file the attached RESPONSE TO GOVERNMENT'S JUNE 23 REQUEST TO ADMIT EVIDENCE OF DEFENDANT'S PRIOR CRIMINAL RECORD.

DATED:6/30/09


HON. SAUNDRA BROWN ARMSTRONG
United States District Judge